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7 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

8 JEREMY OLSEN,

9 Plaintiff,

10 v.

11 XAVIER BECERRA, in his official
capacity as Secretary of the United
States Department of Health and
12 Human Services,

13 Defendant.
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No. 2:21-cv-00326-SMJ

OPPOSITION TO MOTION
FOR SETTLEMENT
CONFERENCE

1 Plaintiff Jeremy Olsen opposes the Secretary's request to refer this
2 matter for a settlement conference. That approach would be wasteful of the
3 Court' and parties' resources. Having engaged in bad faith, illegal conduct
4 for five years, including in the period after this Court specifically found bad
5 faith. Mr. Olsen understands that the Secretary wishes to avoid a judicial
6 decision regarding the Secretary's bad faith, illegal conduct that resulted in
7 harm to tens of thousands of citizens that paid insurance premiums for
8 medical coverage that was denied on bad faith grounds.¹

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¹ Because Mr. Olsen's request for a determination that CMS 1682-R issued
11 illegally and an injunction barring it was not granted in the first case, Mr.
12 Olsen estimates that the Secretary relied on CMS 1682-R to deny more than
13 150,000 CGM claims corresponding to, at a minimum, ~35,000 persons.
14 Because ~one fourth of all Medicare insureds live on less than \$17,000/year,
15 more than 8,500 persons would have been unable to pay for a CGM and
16 would have been without one unless able to secure funding from another,
17 unknown source. People suffering from Type I diabetes, and who also have
18 hypoglycemic unawareness (*i.e.*, the very people for whom a CGM would
19 be prescribed, like Mr. Olsen), on average, are expected to have 1.2 to more
20 than 18 severe hypoglycemic events/year, each one of which results in

1 Mr. Olsen wants a judicial determination regarding the Secretary's
2 conduct and will settle for nothing else. Accordingly, because settlement is
3 not a possibility, going through the motions would be wasteful of the Court'
4 and parties' time/resources and the Secretary's request for more process
5 regarding his bad faith conduct should be rejected.

6 Now that a Second Amended Answer is on file, Mr. Olsen intends to
7 move for summary judgment of all of his claims, including his claim that a
8 special master should be appointed.

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11 irreparable damage to the body. *See, e.g., Reddy, "A Randomized*
12 *Controlled Pilot Study of Continuous Glucose Monitoring and Flash*
13 *Glucose Monitoring in People With Type I Diabetes and Impaired*
14 *Awareness of Hypoglycemia"*, *Diabetic Medicine* 35, 483-490 (2018)
15 ("People with Type I diabetes on average have 1.8 self-treated episodes of
16 hypoglycemia per week, and 0.2-3.2 episodes of severe hypoglycemia,
17 defined as hypoglycemia requiring the assistance of a third party, annually.
18 ... Impaired awareness of hypoglycemia increases the risk of severe
19 hypoglycemia six-fold."). Thus, the failure to address CMS 1682-R in the
20 prior case resulted in, at a minimum, 10,200 to more than 150,000 severe
hypoglycemic events that could have been avoided.

FACTUAL BACKGROUND

Mr. Olsen will not rehash all the facts that this Court is already familiar with and will confine himself to the newest developments. Previously, the Secretary told this Court that it had issued a “Technical Direction Letter” that “superseded” CMS 1682-R. *See* Dkt. #20. Mr. Olsen pointed out that this was not so and that, based on the limitations of the TDL itself, the Secretary would continue to deny ~4,000 claims/month based on the illegal CMS 1682-R.

Concurrent with the proceedings in this case has been another case involving the rejection of CGM claims based on CMS 1682-R. *Linda Smith v. Becerra*, Case No. 21-cv-047-HCN (pending in the United States District Court for Utah). There, Mrs. Smith’s causes of action included one alleging that CMS 1682-R issued illegally and requesting an injunction. When the District Court entered a judgment imposing a rejected settlement offer and not addressing Mrs. Smith’s cause of action directed to CMS 1682-R, Mrs. Smith appealed to the Tenth Circuit. Oral argument in that case was set for May 17, 2022 (a Tuesday). On May 13, 2022 (the Friday before), at ~4:15pm Denver Time, without notice and comment, the Secretary issued his latest Ruling, this time retracting CMS 1682-R. At oral argument, the

1 Secretary then alleged that the case was moot. The Tenth Circuit
2 subsequently ordered supplemental briefing due June 1, 2022.

3 **DISCUSSION**

4 Mr. Olsen was first prevented from filing motions for summary
5 judgment by the Secretary's willful contempt of Congress' command to file
6 the administrative record with the Answer. This, combined with other
7 failings by the Secretary,² have caused delay in Mr. Olsen's effort to file
8 motions for summary judgment. Now that the actual barriers to Mr. Olsen
9 filing motions for summary judgment have been removed, Mr. Olsen
10 intends to do so promptly.

11 Mr. Olsen wants a decision from a Court addressing his causes of
12 action and will settle for nothing else. Accordingly, settlement discussions
13 are pointless.

14 **CONCLUSION**

15 For the reasons set forth above, the Secretary's request should be
16 denied.

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19 Respectfully submitted May 27, 2022.

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² The Answer in this case has been amended twice.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the state of Washington that on the date below, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Vanessa R. Waldref
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DATED May 27, 2022, at Seattle, Washington.

s/ Julia Wolfe
Julia Wolfe, Legal Assistant